

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID BOURGEOIS,	§	
TDCJ-CID NO.1379715,	§	
Plaintiff,	§	
v.	§	CIVIL ACTION NO. H-07-467
	§	
PICK KERL,	§	
Defendant.	§	

OPINION ON DISMISSAL

Plaintiff, a state inmate incarcerated in the Texas Department of Criminal Justice–Criminal Institutional Division, has filed a civil rights complaint (Docket Entry No.1) and an application to proceed *in forma pauperis*. (Docket Entry No.2). A prisoner, however, cannot file a civil action *in forma pauperis* in federal court if, on three or more prior occasions, while incarcerated, he brought an action that was dismissed for being frivolous, malicious, or failing to state a claim upon which relief may be granted. 28 U.S.C. § 1915(g). The only exception to revocation of an inmate’s privilege to proceed *in forma pauperis* is if he is in immediate danger of serious physical harm. *Banos v. O’Guin*, 144 F.3d 883, 884 (5th Cir. 1998). Plaintiff’s complaint does not indicate that he is any danger.

Plaintiff’s litigation history reveals that he falls within the provisions of section 1915(g). Plaintiff has filed at least three other lawsuits in federal courts while incarcerated in prison or a detention facility. All three have been dismissed as either frivolous, malicious, or for failure to state a claim upon which relief may be granted.¹

Accordingly, it is ORDERED that this complaint is DISMISSED under 28 U.S.C. § 1915(g).

¹ See *Bourgeois v. McLane*, 4:06cv4103 (S.D. Tex. Jan. 19, 2007); *Bourgeois v. Schaffer*, 4:06cv3255 (S.D. Tex. Jan. 31, 2007); *Bourgeois v. Mason*, 4:07cv191 (S.D. Tex. Jan. 22, 2007).

All pending motions are further DENIED. (Docket Entries No.2, No.9).

The Clerk will provide a copy of this order to the plaintiff and a copy by facsimile transmission, regular mail, or e-mail to the TDCJ - Office of the General Counsel, Capitol Station, P.O. Box 13084, Austin, Texas, 78711, Fax: 512-936-2159, and the District Clerk for the Eastern District of Texas, 211 West Ferguson, Tyler, Texas 75702, Attention: Manager of the Three-Strikes List.

SIGNED at Houston, Texas, on this 4th day of June, 2007.


MELINDA HARMON
UNITED STATES DISTRICT JUDGE